

(4) A turbine entry gas temperature equal to the maximum steady state temperature approved for use during periods longer than 20 seconds when operating at conditions not associated with 30-second or 2 minutes OEI ratings. The requirement to run the test at the maximum approved steady state temperature may be waived by the FAA if the applicant can demonstrate that other testing provides substantiation of the temperature effects when considered in combination with the other parameters identified in paragraphs (b)(1), (b)(2) and (b)(3) of this section.

■ 6. Amend § 33.87 by revising paragraph (a)(8) to read as follows:

**§ 33.87 Endurance test.**

(a) \* \* \*

(8) If the number of occurrences of either transient rotor shaft overspeed, transient gas overtemperature or transient engine overtorque is limited, that number of the accelerations required by paragraphs (b) through (g) of this section must be made at the limiting overspeed, overtemperature or overtorque. If the number of occurrences is not limited, half the required accelerations must be made at the limiting overspeed, overtemperature or overtorque.

\* \* \* \* \*

Issued in Washington, DC, on August 21, 2009.

**J. Randolph Babbitt,**  
*Administrator.*

[FR Doc. E9-20960 Filed 9-1-09; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2009-0432; Directorate Identifier 2008-NM-168-AD; Amendment 39-15982; AD 2009-15-19]

RIN 2120-AA64

**Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146-100A and 146-200A Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; correction.

**SUMMARY:** The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on July 29, 2009. The error resulted in an incorrect AD number appearing in one

location of the document. This AD applies to certain BAE Systems (Operations) Limited Model BAe 146-100A and 146-200A series airplanes. This AD requires inspecting for damage of the horizontal stabilizer lower skin and joint plates, and doing related investigative and corrective actions.

**DATES:** Effective September 2, 2009.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1175; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** On July 13, 2009, the FAA issued AD 2009-15-19, amendment 39-15982 (74 FR 37528, July 29, 2009), for certain BAE Systems (Operations) Limited Model BAe 146-100A and 146-200A series airplanes. This AD requires inspecting for damage of the horizontal stabilizer lower skin and joint plates, and doing related investigative and corrective actions.

As published, the final rule incorrectly specified the AD number in a single location in the AD as “2008-15-19” instead of “2009-15-19.”

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains September 2, 2009.

**§ 39.13 [Corrected]**

■ In the **Federal Register** of July 29, 2009, on page 37529, in the first column, paragraph 2. of PART 39—AIRWORTHINESS DIRECTIVES is corrected to read as follows:

\* \* \* \* \*

**2009-15-19 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):** Amendment 39-15982. Docket No. FAA-2009-0432; Directorate Identifier 2008-NM-168-AD.

\* \* \* \* \*

Issued in Renton, Washington, on August 24, 2009.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9-21039 Filed 9-1-09; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 206**

[Docket No. FR-4989-F-02]

RIN 2502-AI34

**Home Equity Conversion Mortgage (HECM) Counseling Standardization and Roster**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends HUD’s HECM program regulations by establishing testing standards to qualify individuals as HECM counselors eligible to provide HECM counseling to prospective HECM borrowers. The rule also establishes a HECM Counseling Roster (Roster) of eligible HECM counselors and provides for their removal for cause. This rule is intended to contribute to improving the quality of HECM counseling. HECM counseling enables elderly homeowners when considering mortgage options and whether to pursue a HECM loan. This final rule follows the publication of a January 8, 2007, proposed rule, takes into consideration the public comments received on the proposed rule, and makes certain changes in response to public comment and upon further consideration of certain issues by HUD.

**DATES:** *Effective Date:* October 2, 2009.

**FOR FURTHER INFORMATION CONTACT:** Margaret Burns, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9278, Washington, DC 20410-8000; telephone number 202-708-2121 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background—The January 8, 2007 Proposed Rule**

Section 255 of the National Housing Act (12 U.S.C. 1715z-20) (NHA)

authorizes HUD to insure reverse mortgages, referred to as HECMs, which can be used by senior homeowners, age 62 and older, to convert the equity in their homes to monthly streams of income or a line of credit to be accessed as needed. HECMs must be repaid when the borrower no longer occupies the home. A HECM is originated by a lending institution, such as a mortgage lender, bank, credit union, or savings and loan association, and the mortgage is insured by HUD. HUD's regulations implementing the HECM program are codified at 24 CFR part 206.

To assist the senior homeowner in making an informed decision of whether a HECM meets their needs, the homeowner, consistent with section 255 of the NHA, is required to receive counseling by a HUD-approved HECM counselor. Section 255(f) of the NHA requires the provision of consumer education and information to HECM mortgagors by entities other than the lender. Each mortgagee must make available to a homeowner, at the time of the loan application, a written list of the names and addresses of third-party information sources that are approved by HUD as responsible to provide the statutorily required counseling. The counseling must include information on options other than a HECM, the financial implications of entering into a HECM, the tax consequences of a HECM, and any other information that HUD or the prospective borrower may request.

On January 8, 2007, at 72 FR 870, HUD published a proposed rule to amend HUD's HECM regulations by establishing testing standards to qualify individuals as counselors eligible to provide HECM counseling to prospective borrowers. In addition, HUD proposed to establish a Roster of eligible HECM counselors and provide for their removal for cause. The regulatory amendments were designed to improve the quality of HECM counseling, which would enable elderly homeowners to make more informed decisions when considering whether to pursue a HECM loan.

In addition to soliciting comments generally, the proposed rule solicited specific comments on two areas of interest. First, the proposed rule requested input from housing counseling agencies and counselors concerning the implementation of the HECM Roster for HECM counselors who have already passed the HECM counseling exam. Specifically, the rule asked whether HUD should adopt a delayed implementation for those counselors who have already passed the exam, or, alternatively, should those

counselors automatically be included in the Roster for a period of time before they must repeat the exam. Second, the rule invited comments that address whether a counselor should be required to take the exam on a regular basis, for example, every 2 years, in order to remain on the Roster, and if a counselor should be required to take the exam on a regular basis, how often should the counselors take the exam to remain on the Roster.

## II. The Housing and Economic Recovery Act of 2008 (HERA)

Section 255 of the NHA was recently amended by the FHA Modernization Act, Title I of Division B of the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110-289, approved July 30, 2008), which was enacted to modernize, streamline, and expand the scope of several Federal Housing Administration (FHA) programs. Section 2122 of the FHA Modernization Act amended section 255 of the NHA to provide, among other things, that: (1) Adequate counseling must be provided to HECM mortgagors; (2) such counseling shall be provided by counselors who meet qualification standards; and (3) adequate HECM counseling must be provided from an independent third party not associated with or compensated by a party involved in originating or servicing the mortgage, funding the loan underlying the mortgage, or the sale of annuities or other financial or insurance products. Accordingly, the final rule incorporates these statutory changes.

## III. This Final Rule; Changes to the January 8, 2007 Proposed Rule

This final rule follows publication of the January 8, 2007, proposed rule and takes into consideration the public comments received on the proposed rule. Moreover, this final rule makes certain changes in response to those comments, and conforms the regulations provided by this final rule to the statutory amendments made to section 255 of the NHA by section 2122 of the FHA Modernization Act. The final rule makes five changes to the proposed regulatory language:

1. *Automatic placement on the counselor Roster of counselors who passed HUD examination.* The final rule provides that HECM counselors who have taken and passed the exam as of the effective date of this final rule will be automatically included on the HECM counseling Roster.

2. *Reinstatement of counselors removed from Roster.* The final rule provides that a counselor who has been removed from the Roster and seeks

reinstatement must submit evidence that the deficiencies previously cited by HUD have been addressed and that program improvements have been made that justify reinstatement. The evidence to be provided shall be written documentation attesting to the fact that deficiencies previously identified by HUD have been addressed and corrected and that improvements have been made that justify the reinstatement of the counselor.

3. *Eligibility of counselors for placement on Roster.* The final rule provides that to be eligible for placement on the Roster a counselor must not be listed on the General Services Administration's Suspension and Debarment List, HUD's Limited Denial of Participation List, or HUD's Credit Alert Interactive Response System.

4. *Identified period to submit a written appeal.* The final rule provides that a counselor shall have 30 days to submit a written appeal of a proposed removal from the Roster.

5. *Maximum duration for the period of removal.* The final rule provides that a counselor may be removed for a maximum period of one year.

In addition to the five changes described above, HUD has taken the opportunity afforded by the final rule to reorganize portions of the proposed rule and to make other nonsubstantive, technical changes to the regulatory language for purposes of clarity and organization.

## IV. Discussion of the Public Comments on the January 8, 2007 Proposed Rule

The public comment period on the proposed rule closed on March 9, 2007. HUD received 29 public comments on the proposed rule, covering a range of issues. Comments were received from housing counselors, counseling agencies, and industry organizations. This section of the preamble presents a summary of the key issues raised by public commenters and HUD's responses to those issues. As will be reflected in the discussion that follows, some of the issues raised by commenters were not directed to placement or removal of counselors on the Roster, but rather focused on other aspects of HUD's housing counseling regulations. Proposed changes to HUD's Housing Counseling regulations were not the subject of this rulemaking. Nevertheless, several good suggestions for changes were submitted. HUD is taking these suggestions under consideration and may, as a result, through separate rulemaking, propose changes to HUD's Housing Counseling regulations,

consistent with the suggestions proposed.

*Comment:* Several commenters offered general support for HUD's effort to establish a HECM Roster. One commenter requested that HUD certify organizations rather than individual counselors.

*Response:* HUD has not revised the rule in response to these comments. Approval of an organization would not assure that the individual counselors employed by the organization are trained and qualified to provide the necessary counseling. HUD continues to feel strongly that a roster of HECM exam-qualified individual counselors is critical to ensure that the counselors providing these services are qualified to do so.

*Comment:* One commenter requested that all counselors on the Roster follow a standard protocol of topics covered.

*Response:* HUD has not revised the rule in response to this comment. However, the adoption of a standard counseling protocol is required by section 255 of the NHA, as amended by the FHA Modernization Act, no later than July 30, 2009. Section 255(f), as recently amended, directs HUD to establish qualification standards and protocols for HECM counselors. Section 2132 of the FHA Modernization Act of 2008 authorizes HUD to issue additional requirements, by notice, for the purpose of facilitating implementation of the provisions of the FHA Modernization Act. Accordingly, the standard counseling protocols will be issued by notice, in accordance with section 2132, on or prior to the statutory deadline.

*Comment:* Several commenters asked HUD to clarify the requirements that lenders provide the list of counselors to clients. The commenters suggested that HUD should permit HECM lenders to provide less than the complete list of HECM counselors for a client's State because the full list of counselors may be overwhelming in number. One of these commenters recommended that a mortgagee should have the option of providing a list of HUD-approved HECM counselors with whom the mortgagee has experience, a list of such counselors within the geographic area, or any other criteria that enables the mortgagee to provide a reasonably limited list.

*Response:* HUD will take the suggestion made by the commenters under advisement. However, the comment was outside the scope of the proposed rule, which was exclusively concerned with the placement and removal procedures for the proposed new HECM Roster. Accordingly, HUD has not revised the proposed rule in response to the commenters' suggestion.

*Comment:* One commenter suggested that counselors should have to disclose relationships that a counseling agency may have with some of the lenders.

*Response:* HUD agrees that all HUD-approved housing counseling agencies must take precautions to eliminate any appearance of a conflict of interest or preferential treatment to any particular lender or lenders. In accordance with HUD's Housing Counseling Program regulations, agencies providing such services are required, pursuant to 24 CFR 214.303(g), to provide all clients with a disclosure statement that explicitly describes the various types of services provided by the agency and any financial relationships between the agency and any other industry partners. Further, the disclosure must clearly state that the client is not obligated to receive any other services offered by the organization or its exclusive partners.

Any language that permits a party directly or indirectly associated with funding or origination of an HECM to provide housing counseling, or any language allowing compensation to an agency by a third party originating or funding the HECM, has been and will be removed from guidance or revised to conform with section 255(d)(2)(B) of the National Housing Act, as recently amended by section 2122 of HERA. In this regard, see FHA Mortgagee Letter 2008-28, entitled "Prohibition on Mortgage Funded Home Equity Conversion Mortgage (HECM) Counseling," which states that mortgagees are no longer permitted to pay for HECM counseling on behalf of mortgagors. The mortgagee letter advises FHA mortgagee lenders of the conflict-of-interest provisions that the FHA Modernization Act directs counseling agencies to avoid. As noted earlier in this preamble, section 255 of the National Housing Act, as amended by the FHA Modernization Act, requires that counseling must come from an independent third party that is neither directly or indirectly associated with or compensated by a party involved in originating or servicing the mortgage, the funding of the loan underlying the mortgage, or the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product. A copy of Mortgagee Letter 2008-28 may be downloaded from the HUD Client Information and Policy System (HUDCLIPS) Web site at <http://www.hud.gov/hudclips>.

*Comment:* Several commenters stated the regulation governing provision of counseling services, 24 CFR 206.41(a), should be revised to clarify that clients are referred to counselors and agencies within their State or local area to

encourage face-to-face counseling, and that a Roster listing counselors by State would promote this. HUD should encourage counseling to take place face-to-face, and permit telephone counseling only in limited cases.

*Response:* This suggestion is outside the scope of the proposed rule, which was exclusively concerned with the policies and procedures governing placement and removal from the new HECM Roster. However, it is HUD's position that the client should have a choice regarding whether to have face-to-face counseling or telephone counseling. Clients have various reasons for requiring telephone counseling, such as limited mobility, either as a result of physical impairment or lack of transportation, or because they live in a remote rural area where the distance to the nearest counseling agency is prohibitive.

*Comment:* Several commenters requested additional information on how the names of counselors would be made available to the public. The commenters suggested that HUD should post the names on its Web site.

*Response:* Exam-qualified HECM counselors eligible to provide HECM counseling services will be listed on HUD's Web site. Lenders also will be able to access this list through HUD's Web site. Only exam-qualified counselors who are meeting the continuing education and other requirements will be listed on the HUD Web site, and the Web site will be updated regularly.

*Comment:* A commenter wrote that the Roster should include relevant dates, including the date that the counselor was placed on the Roster, the termination date, *etc.*

*Response:* HUD will include relevant dates, including when a counselor was added to HUD's Web site as a provider of HECM counseling services. HUD is developing an electronic certification that can be created only by counselors on the Roster.

*Comment:* A commenter asked HUD to state whether HUD or another entity will maintain the Roster. Another commenter suggested that HUD establish a single contact to manage the Roster, to ensure consistency.

*Response:* HUD's Office of Single Family Housing will maintain the Web site and the list of counselors approved to provide HECM counseling services.

*Comment:* As noted earlier in the preamble, HUD specifically requested comments on the implementation of the proposed regulatory requirements for counselors who have already passed the HECM counseling program. The commenters who submitted comments

on this issue uniformly recommended that counselors who have already taken and passed the exam be automatically included on the Roster. The commenters differed on whether such counselors should be required to retake the examination within a certain time period. For example, one commenter suggested that counselors who passed the exam within the past 2 years should have 2 years to retake the exam, and that counselors who passed the exam more than 2 years ago should be required to retake the exam within one year.

*Response:* HUD agrees with the commenters that counselors who have already taken and passed the exam should be automatically included on the Roster. The final rule provides that HECM counselors who have passed the standardized HECM counseling exam on or before the effective date of this final rule will be automatically included on the Roster, without needing to submit an application for placement on the Roster. Such counselors will not be required to retake the examination immediately, but must comply with all other eligibility criteria to maintain their listing on the Roster, including taking the examination every 3 years, or be subject to removal in accordance with § 206.306 of the final rule.

*Comment:* As noted above, the preamble to the proposed rule specifically requested comments on whether counselors should be required to retake the examination on a regular basis to maintain their listing on the Roster. In response to this solicitation, several commenters submitted comments on the frequency of testing. The majority of comments opposed a retesting requirement. Several commenters suggested that, in lieu of the need to retake the test on a periodic basis, counselors should be subject to continuing education requirements. Those commenters writing in support of a retesting requirement differed on the time period for retaking the test. For example, several commenters suggested that testing should take place every 2 years, while another commenter wrote that testing should take place every 3 years. Two commenters wrote that counselors should be tested every 3 years, to eliminate the need to demonstrate continuing education, which would be administratively burdensome.

*Response:* HUD agrees with the commenters who wrote in favor of a retesting requirement, and the final rule requires that counselors periodically retake the HECM counseling examination. Testing is required as part of the application process for placement on the Roster. After placement on the

Roster, counselors are required to take the examination every 3 years to maintain their listing on it. HUD is in favor of periodic testing because the HECM program is a complicated program that will change over time, and it is vital that counselors remain aware of changes to the HECM program and be conversant in them. Testing is an efficient and effective way to measure knowledge of and familiarity with new and sophisticated elements of the program. Counselors listed on the Roster are required to meet continuing education requirements. Specifically, this final rule requires continuing education for all HECM counselors no less than once every 2 years. For purposes of satisfying this requirement, continuing education encompasses HUD-approved training, as well as professional courses selected by the counselor. Proof of continuing education must be kept on file at the counseling agency and must be made available to HUD for inspection upon request.

*Comment:* One commenter asked that HUD clarify in 24 CFR 206.302 the time frame for certification of a counselor and the time frame in which the counselor will appear on the Roster following certification. This same commenter wrote that HUD should consider a HECM counseling certificate valid as long as the counselor who signed the certificate appeared on the Roster at the time the counseling took place and that the lender is not required to validate this information.

*Response:* HUD is developing an electronic certification that can be created only by counselors on the Roster. Although no changes are being made to the regulatory text, the automatic Internet-based certification addresses the concerns raised by the commenter concerning time frame and validity issues. Internet-based certification is automatic and will be available within a day or two of applying, provided that counselor meets all of the requirements. No lender verification will be needed so long as the certification appears in the system. A lender will be able to view the certificate so long as he or she knows the certification number. The counselor's certificate will be valid on the day the certificate was produced electronically.

*Comment:* Several commenters wrote that the current HECM counseling exam is too difficult and complicated. The commenters wrote that the test questions should be more relevant to HECM counseling and the current exam questions do not reflect relevance to HECM counseling to the degree they

should. One commenter wrote that the exam should focus on counseling situations rather than on underwriting technicalities.

*Response:* It is highly important that HECM counselors understand the features of HECMs and reverse mortgages in general. Because reverse mortgages are a relatively complex product available to seniors, it is important for counselors to be able to explain the various technical aspects of a reverse mortgage to their clients. The test reflects the knowledge required of counselors so that they are fully familiar with HECMs and can provide the advice sought by senior homeowners about this product.

*Comment:* Several commenters wrote that the exam, in the past, has been available on a limited basis and that this, coupled with staffing level difficulties, may present barriers for agencies in their efforts to maintain staff listed on the Roster. These commenters suggested that the exam be widely publicized and more widely available.

*Response:* The exam is available to people at testing centers across the United States. The locations of these testing centers are available online at <http://www.hecmexam.org>. Explicit instructions in reference to scheduling an appointment to take the exam are provided on the Web site. Testing is available at testing centers, within their respective business hours.

*Comment:* One commenter wrote that HECM testing should be provided by an objective third party, to avoid the possibility of excluding candidates from competing agencies or intermediaries.

*Response:* The tests are administered by objective third parties at test centers throughout the United States. HUD will review and update the exam on a periodic basis as program requirements change.

*Comment:* Several commenters submitted comments on the continuing education requirements. Some of the commenters wrote that training and training materials should be available from HUD without cost to counselors. One commenter wrote that training should be provided by objective, third-party providers and not by lenders.

*Response:* Training and professional development for counselors is very important to the success of the HECM program. HUD currently provides funding for scholarships, travel, and lodging to make training and technical assistance available to HECM counselors. HUD funds are limited and may not be available to pay for continuing education of all counselors providing HECM services. Objective

training is available from a variety of nonprofit organizations.

*Comment:* One commenter wrote that HUD should require that counselors on the Roster be employed by a HUD-approved housing counseling agency.

*Response:* HUD agrees with this commenter. However, no change to the language of the proposed rule is necessary. That is because, as provided in the proposed rule (and the final rule), to be eligible for placement on the Roster, a counselor must be employed by a HUD-approved housing counseling agency or an affiliate of a HUD-approved intermediary or State housing finance agency.

*Comment:* One commenter wrote that HUD should prohibit the listing on the Roster of counselors who have been convicted of a felony or who work for lenders or for any commercial entity that sells goods or services to reverse mortgage borrowers. This commenter wrote that consumers need to know that counselors do not have a personal financial interest in the outcome of the counseling.

*Response:* Housing counseling agencies must adhere to the regulation found in 24 CFR part 214, Housing Counseling Program. The regulation at 24 CFR 214.103(c), regarding ineligible activities, states that an agency's directors, partners, officers, principals, or employees must not be indicted for or convicted of a criminal offense that reflects upon the responsibility, integrity, or ability of the agency to participate in housing counseling activities. These offenses include criminal offenses that can be prosecuted at a local, State, or Federal level. This provision of the Housing Counseling Program regulations is strengthened by section 255(d)(2)(B) of the National Housing Act, which, as recently amended, provides that counseling must be provided by an independent third party not directly or indirectly associated with or compensated by a party originating a mortgage, funding a mortgage, or selling annuities or other financial or insurance products.

Further, as noted above, HUD has revised the rule to help ensure that only high-performing counselors are eligible for placement on the Roster. Specifically, the final rule provides that to be eligible for placement on the Roster a counselor must not be listed on the General Services Administration's Suspension and Debarment List, HUD's Limited Denial of Participation List, or HUD's Credit Alert Interactive Response System.

*Comment:* One commenter wrote that only experience and effective tracking

and monitoring methods can ensure effective HECM counseling.

*Response:* HUD recognizes the importance of good documentation, tracking, and monitoring efforts. HUD performs periodic reviews of housing counseling agencies and reviews files during that process.

*Comment:* One commenter wrote that HUD should clarify what "actions" a counselor must have the appropriate technology to monitor. Another commenter wrote that HUD should not require the use of particular technology that would be redundant to the current client management system in use by a HUD-approved counseling organization.

*Response:* HUD's Housing Counseling Program regulations at 24 CFR 214.103 require agencies participating in HUD's Housing Counseling Program to utilize a client management system (CMS) in order to collect and report client-level data, including the results of the counseling. A CMS provides for collection and reporting of client-level information, including, but not limited to, financial and demographic data, counseling services provided, and outcomes data. HUD does not require any particular technology, so long as the technology is compatible with the HUD Agency Reporting Module (ARM) system and can transmit data to the ARM database. For reporting purposes, there is no lender involvement required. HUD requires counselors to follow up to determine from the client the outcome of the counseling.

*Comment:* Two commenters suggested that HUD revise 24 CFR 206.306(c) to provide maximum duration for the period of removal.

*Response:* HUD has the administrative duty to remove counselors from the Roster for the amount of time it deems necessary, depending on the issue. HUD agrees with the Commenter and has revised the regulation to specify a maximum 12-month period of removal. Counselors may be removed for a maximum period of one year. A maximum 12-month period of removal is consistent with HUD practice under other Rosters for participation in FHA programs and has proven to be an adequate amount of time for parties to remedy inadequacies and for HUD's Office of Housing to verify such remedies. HUD will determine the duration of the removal on a case-by-case basis, taking into consideration the individual facts of the case and pursuant to the removal procedures described in § 206.306 of the final rule. To be placed on the Roster again, counselors must apply for reinstatement upon completion of their required removal duration.

*Comment:* A commenter requested that HUD provide 30 days instead of the proposed 20 days for counselors to submit a written appeal.

*Response:* HUD agrees with the commenter and has revised the rule to provide a counselor with 30 days rather than 20 days to submit a written appeal.

*Comment:* One commenter asked that HUD revise the removal provisions to remove counselors from the Roster if they receive anything of value from a mortgage lender, broker, servicer, investor, lead generator, or other industry entity.

*Response:* A HUD-approved counseling agency cannot either directly or indirectly be associated with or compensated by a party involved in originating or servicing the HECM, funding the HECM loan underlying the mortgage, or the sale of annuities, investments, long-term care insurance or any other type of financial or insurance product. As noted earlier, such prohibition is now a statutory requirement under section 255(d)(2)(B) of the NHA.

*Comment:* One commenter wrote that HUD should confirm that the counselor will be removed on the effective date of the removal notice, to avoid any confusion as to whether the counselor was approved at the time the counseling was provided.

*Response:* The HECM counselor Roster will remain consistent with other HUD roster programs and the appeal process provided in these programs. If the counselor does not submit a timely written response to the proposed removal notice, the removal will be effective 30 days after the date of the removal notice. If the agency appeals the removal within 30 days of the letter, the effective date will be the date of HUD's notice after the appeal.

*Comment:* A commenter asked HUD to revise 24 CFR 206.306 to indicate that a counselor applying for reinstatement must submit evidence that the deficiencies previously cited by HUD have been addressed and program improvements have been made to justify reinstatement.

*Response:* The final rule provides that HUD will require that a counselor seeking reinstatement must submit evidence that the deficiencies previously identified by HUD have been addressed and program improvements have been made that justify reinstatement.

## V. Findings and Certifications

### *Paperwork Reduction Act*

The information collection requirements in this final rule have been

approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0582. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

*Environmental Impact*

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, review, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This rule would not impose a Federal mandate on any State, local, or tribal government, nor on the private sector, within the meaning of the UMRA.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are no anticompetitive discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that would need to be complied with by small entities. The final rule would require that HECM counselors be trained and qualified to perform their particular functions. This may require a financial outlay, but the expense would be relatively small. As such, any new expense to small entities caused by the rule would be negligible. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments, nor does it preempt State law within the meaning of the Executive Order.

**List of Subjects in 24 CFR Part 206**

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number is 14.183.  
 ■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 206 to read as follows:

**PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE**

■ 1. The authority citation for part 206 continues to read as follows:

**Authority:** 12 U.S.C. 1715b, 1715z–1720; 42 U.S.C. 3535(d).

■ 2. Amend § 206.3 by adding, alphabetically, a definition of “*Home Equity Conversion Mortgage (HECM) counselor*” to read as follows:

**§ 206.3 Definitions.**

\* \* \* \* \*

*Home Equity Conversion Mortgage (HECM) counselor* means an individual who provides statutorily required counseling to clients who may be eligible for or interested in obtaining an FHA-insured HECM. This counseling assists elderly homeowners who seek to convert equity in their homes into income that can be used to pay for home improvements, medical costs, living expenses, or other expenses.

\* \* \* \* \*

■ 3. Revise § 206.41(a) to read as follows:

**§ 206.41 Counseling.**

(a) *List provided.* At the time of the initial contact with the prospective mortgagor, the mortgagee shall give the mortgagor a list of the names, addresses, and telephone numbers of housing

counselors and their employing agencies, which have been approved by the Secretary, in accordance with subpart E of this part, as qualified and able to provide the information described in paragraph (b) of this section. The mortgagor must receive counseling.

\* \* \* \* \*

■ 4. Add a new subpart E to read as follows:

**Subpart E—HECM Counselor Roster**

- Sec.
- 206.300 General.
- 206.302 Establishment of the HECM Counselor Roster.
- 206.304 Eligibility for placement on the HECM Counselor Roster.
- 206.306 Removal from the HECM Counselor Roster.
- 206.308 Continuing education requirements of counselors listed on the HECM Counselor Roster.

**§ 206.300 General.**

This subpart provides for the establishment of the HECM Counselor Roster (Roster) and sets forth the requirements for the operation of the HECM Counselor Roster.

**§ 206.302 Establishment of the HECM Counselor Roster.**

(a) *HECM Counselor Roster.* HUD maintains a Roster of HECM counselors. Only counselors listed on the Roster are approved to provide HECM counseling. A homeowner applying for an HECM loan to be insured by HUD must receive the required HECM counseling from one of the counselors on the Roster.

(b) *Disclaimer.* The inclusion of a HECM counselor on the Roster does not create or imply a warranty or endorsement by HUD of the listed counselor to a prospective HECM borrower or to any other organization or individual, nor does it represent a warranty of any counseling provided by the listed HECM counselor. The inclusion of a counselor on the Roster means that a listed counselor has met the HUD-prescribed qualifications and conditions for inclusion on the Roster and that the counselor is approved to provide HECM counseling by telephone or face-to-face.

**§ 206.304 Eligibility for placement on the HECM Counselor Roster.**

(a) *Application.* To be considered for placement on the Roster, a HECM counselor must apply to HUD in a form and in a manner prescribed by HUD.

(b) *Eligibility.* HUD will approve an application for placement on the Roster if the application demonstrates that the HECM counselor:

(1) Is employed by a HUD-approved housing counseling agency or an affiliate of a HUD-approved intermediary or State housing finance agency;

(2) Successfully passed a standardized HECM counseling exam administered by HUD, or a party selected by HUD, within the last 3 years. In order to maintain eligibility, a counselor must successfully pass a standardized HECM counseling exam every 3 years;

(3) Received training and education related to HECMs within the prior 2 years;

(4) Has access to and is supported by technology that enables HUD to track the results of the counseling offered to each loan applicant, e.g., what action(s), if any, did the client take after receiving the HECM counseling; and

(5) Is not listed on:

(i) The General Services Administration's Suspension and Debarment List;

(ii) HUD's Limited Denial of Participation List; or

(iii) HUD's Credit Alert Interactive Response System.

(c) "*Grandfathering*" of counselors who have passed standardized HECM counseling examination. HECM counselors who have passed the standardized HECM counseling exam described in paragraph (b)(2) of this section on or before October 2, 2009 will automatically be placed on the Roster and will remain on the Roster for 3 years. After 3 years, the counselor is required to take the standardized HECM counseling exam again.

#### **§ 206.306 Removal from the HECM Counselor Roster.**

(a) *General.* HUD reserves the right to remove a HECM counselor from the Roster, in accordance with this section.

(b) *Cause for removal.* Cause for removal of a HECM counselor from the Roster includes, but is not limited to:

(1) Failure to comply with the education and training requirements of § 206.308;

(2) Failure to respond within a reasonable time to HUD inquiries or requests for documentation;

(3) Misrepresentation or fraudulent statements;

(4) Promotion, representation, or recommendation of any specific lender;

(5) Failure to comply with applicable fair housing and civil rights requirements;

(6) Failure to comply with applicable statutes and regulations;

(7) Failure to comply with applicable statutory counseling requirements found at section 255(f) of the National Housing Act, which include, but are not limited

to, providing information about: options other than a HECM, the financial implications of entering into a HECM, the tax consequences of a HECM, and any other information that HUD or the applicant may request;

(8) Failure to maintain any registration, license, or certification requirements of a State or local authority;

(9) Unsatisfactory performance in providing counseling to HECM loan applicants. HUD may determine that a HECM counselor's performance is unsatisfactory based on a review of counseling files or other monitoring activities, or if the counselor fails to employ the minimum competencies, as measured by the HUD-administered HECM counseling exam; or

(10) For any other reason HUD determines to be so serious as to justify an administrative sanction.

(c) *Automatic removal from HECM Counselor Roster for failure to maintain required State or local licensure.* A HECM counselor who is required to maintain a State or local registration, license, or certification and whose registration or certification is revoked, suspended, or surrendered will be automatically suspended from the Roster until HUD receives evidence demonstrating that the local- or State-imposed sanction has been lifted.

(d) *Removal procedure.* Except as provided in paragraph (c) of this section, the following procedures apply to removal of a HECM counselor from the Roster.

(1) HUD will give the HECM counselor written notice of the proposed removal. The notice will state the reasons for and the duration of the proposed removal.

(2) The HECM counselor will have 30 days from the date of receipt of the notice (or such time as described in the notice, but in no event less than a period of 30 days) to submit a written appeal of the proposed removal, along with a written request for a conference.

(3) A HUD official will review the appeal and render a response affirming, modifying, or canceling the removal. The HUD official will not be a person who was involved in HUD's initial removal decision. HUD will respond with a decision within 30 days after the date of receiving the appeal or, if the counselor has requested a conference, within 30 days after the conference was held. HUD may extend the 30-day period by providing written notice to the counselor.

(4) If the counselor does not submit a timely written response, the removal will be effective 31 days after the date of HUD's initial removal notice (or after

the period provided in the notice, if longer than 30 days). If a written response is submitted, and the removal decision is affirmed or modified, the removal will be effective on the date of HUD's notice affirming or modifying the initial removal decision.

(e) *Maximum time period of removal.* The maximum time period for removal from the Roster is 12 months from the effective date of removal for all removed counselors. A counselor who has been removed must apply for reinstatement on the Roster.

(f) *Placement on the Roster after removal.* A counselor who has been removed from the Roster must apply for reinstatement on the Roster (in accordance with § 206.304) after the period of the counselor's removal from the Roster has expired. HUD may require the counselor to retake and pass the HECM exam for reinstatement when the reason for removal from the Roster was particularly egregious. Typically, the counselor will not be required to take and pass the HECM exam; however, HUD must be ensured by the counselor that the HECM counseling requirements are understood and will be followed. An application from a counselor for reinstatement on the Roster will be rejected if the period of the counselor's removal from the Roster has not expired.

(g) *Voluntary removal.* A HECM counselor will be removed from the Roster upon HUD's receipt of a written request from the counselor.

(h) *Other action.* Nothing in this section prohibits HUD from taking such other action against a counselor or from seeking any other remedy against a counselor available to HUD by statute or other authority.

#### **§ 206.308 Continuing education requirements of counselors listed on the HECM Counselor Roster.**

A counselor listed on the Roster must receive, on a continuing basis, training, education, and technical assistance related to HECMs. The counselor must maintain evidence of the successful completion of such continuing education, and such evidence must be made available to HUD upon request. HUD will consider a HECM counselor's successful completion of a HECM course no less than once every 2 years as satisfying the requirements of this section.

Dated: August 20, 2009.

**David H. Stevens,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. E9–21076 Filed 9–1–09; 8:45 am]

**BILLING CODE 4210-67-P**